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EX PARTE OR LATE FILED

September 7, 1999

**VIA HAND DELIVERY**

Magalie Roman Salas  
Secretary  
Federal Communications Commission  
The Portals - TW-A325  
445 Twelfth Street, S.W.  
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

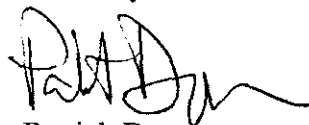
Re: Ex Parte  
SBC/Ameritech Merger  
CC Docket No. 98-141

Dear Ms. Salas:

Pursuant to Section 1.1206(b)(1) of the Commission's rules, 47 C.F.R. Section 1.1206(b)(1), please associate the attached letter with the public file in this proceeding.

Two copies of this letter are enclosed.

Sincerely,



Patrick Donovan

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AUG 31 1999

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August 31, 1999

Honorable William Kennard  
Chairman  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W. - Suite 8B201  
Washington, DC 20554

**DATE STAMP & RETURN**

Re: Ex Parte  
SBC/Ameritech Merger  
CC Docket No. 98-141

Dear Chairman Kennard:

On behalf of Level 3 Communications, Inc. ("Level 3"), this letter urges the Commission to establish as a precondition to any approval of the proposed merger of SBC and Ameritech that these carriers fully comply with reciprocal compensation provisions of their interconnection agreements with competitive local exchange carriers ("LECs") as interpreted and enforced by State commissions.

In the *Dial-Up Order*, the Commission determined that dial-up calls to ISPs are not subject to the reciprocal compensation provisions of Section 251(b)(5) of the Act because such calls are largely jurisdictionally interstate.<sup>1</sup> The Commission determined that it had no rules governing intercarrier compensation for dial-up calls to ISPs, issued a notice of proposed rulemaking to establish such rules, and that pending adoption of such rules, States could determine whether this traffic was subject to reciprocal compensation under existing interconnection agreements.

Although Level 3 believes that the Commission should have determined that dial-up calls to ISPs are subject to reciprocal compensation under Section 251(b)(5), the *Dial-Up Order* nonetheless established a framework for expeditious resolution by States of reciprocal compensation issues and set the stage for adoption of permanent federal rules on a going-forward basis. Since the *Dial-Up Order*, a number of States and/or reviewing courts have addressed whether incumbent LECs should be required to pay reciprocal compensation for dial-up calls to ISPs terminating on competitive LEC networks. Of these, state commissions or courts

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<sup>1</sup> *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996 and Inter-Carrier Compensation for ISP-Bound Traffic*, Declaratory Ruling and Notice of Proposed Rulemaking, CC Docket Nos. 96-98, 99-68, FCC 99-38, released February 26, 1999 ("*Dial-Up Order*").

representing eighteen States have determined that reciprocal compensation should be paid for this traffic.<sup>2</sup> These include the SBC/Ameritech States of California, Nevada, Ohio, Indiana, Michigan, and Illinois.

Level 3 has found, however, that incumbent LECs are refusing to pay reciprocal compensation to Level 3 even after a State has determined that dial-up calls to ISPs are subject to reciprocal compensation. Level 3 has requested that Ameritech pay reciprocal compensation owed to Level 3 under its existing interconnection agreements for Illinois and Michigan,<sup>3</sup> but to date it has refused to do so even though both federal and state law has determined that reciprocal compensation is due for this traffic after a State has addressed the issue.<sup>4</sup>

Level 3 urges the Commission to establish as a condition on any approval of the proposed SBC/Ameritech merger that SBC and Ameritech, prior to the merger, pay past due reciprocal compensation to competitive LECs. Specifically, the Commission should require that SBC and Ameritech pay reciprocal compensation if a competitive LEC has requested payment and the State licensing has not determined that CLECs are not due compensation. SBC and Ameritech should also be required to pay where reciprocal compensation is the subject of litigation in a State but no order has been issued by a State commission or court authorizing non-payment pending litigation.

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<sup>2</sup> New Jersey has decided that dial-up calls to ISPs are not subject to reciprocal compensation. Massachusetts and New York are continuing to examine whether reciprocal compensation is applicable to this traffic.

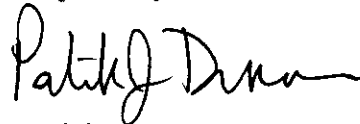
<sup>3</sup> Level 3 provides local telecommunications services in the following States in SBC/Ameritech territory: Illinois, Michigan, and Texas. Level 3 hopes to be providing local telecom services in Ohio very shortly, and will ask the Ohio State Commission to open a proceeding on reciprocal compensation. SBC has paid outstanding reciprocal compensation amounts in Texas to Level 3 through May 10, 1999.

<sup>4</sup> *Michigan Bell Telephone Co., d/b/a Ameritech Michigan, Inc. v. MFS Intelenet of Michigan, et al.*, No. 5:98 CV 18, slip op. (W.D. Mich., rel Aug. 2, 1999); *Illinois Bell Tel. Co. d/b/a Ameritech Illinois v. WorldCom Technologies, Inc. et al.*, Case Nos. 98-3150, 98-3322, 98-4080 (7th Cir. slip. op. June 18, 1999).

Honorable William Kennard  
August 31, 1999  
Page 3

These conditions would achieve the expeditious resolution of reciprocal compensation issues provided for under the framework established by the Commission in the *Dial-Up Order*. At the same time, these conditions acknowledge and accommodate incumbent LECs' right to litigate reciprocal compensation issues at the State level, and would require payment only where incumbent LECs have not sought or obtained an order staying the obligation to pay.

Respectfully submitted,



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